

Decision **DRAFT DECISION OF ALJ McKENZIE** (Mailed 7/19/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company on an Expedited Basis for Exemption under Section 853 for Easements on PG&E Land Allowing Delta Energy Center, LLC to Maintain an Electric Transition Structure for the Delta Project and CPN Pipeline to Maintain Gas Facilities for the Delta Project and the Los Medanos Energy Center Project, or in the Alternative for Approval of Easements under Section 851. (U 39 M)

Application 01-07-031
(Filed July 26, 2001)

In the Matter of the Application of Pacific Gas and Electric Company (U 39 M) for Approval of Leases to Allow CalPeak Power, LLC to Site Generator Plants on Utility Owned Land Adjacent to Substations.

Application 01-06-043
(Filed June 25, 2001)

ORDER APPROVING PROPOSAL TO RESOLVE PROCEEDINGS

In this decision we approve a proposal made by Pacific Gas and Electric Company (PG&E) for resolving these proceedings, the current phase of which arose out of Decisions (D.) 01-08-069 and D.01-08-070. In D.01-08-069, we granted approval under § 851 of the Public Utilities Code of two easements on PG&E land that were necessary for the construction of a major power plant by a third party. In D.01-08-070, we granted an exemption under Pub. Util. Code § 853(b) from the requirements of § 851 in connection with the lease of land at three PG&E substations needed for the construction of three other power plants.

In both decisions, however, we also ordered PG&E to show cause why it should not be sanctioned for filing the applications unreasonably late and for misusing General Order (GO) 69-C.

Under the proposal set forth in its February 13, 2004 motion, PG&E would pay the Commission \$55,000 within 10 days after a decision closing these dockets. As part of the proposal, PG&E would not have to make any “admission of any fact, law or violation alleged in D.01-08-070 or D.01-08-069.” However, PG&E points out that as a result of the orders to show cause (OSCs) issued in these two decisions, it has instituted “significant changes in the way it reviews and evaluates third-party requests to use utility property to ensure compliance with Section 851 and Commission General Order 69-C.” PG&E asserts that as a result of these changes -- which its filing describes in detail -- it is apparent that “the proceedings have already had a deterrent effect that will prevent future violations.” (PG&E Motion, p. 1.) PG&E also contends that its proposal is reasonable in light of the whole record, consistent with law, and in the public interest.

The February 13 motion states that the Consumer Protection and Safety Division (CPSD) – successor to the Consumer Services Division (CSD), the Commission entity that had been designated to prosecute the two OSCs – has reviewed and accepted PG&E’s proposal. (*Id.* at 7.) Because CPSD supports the PG&E proposal, because no other party has expressed any opposition to it, and because we believe the internal changes PG&E has made in how it handles leases and easements serve to address the concerns that led to the issuance of the OSCs, we will adopt PG&E’s proposal.

Background and the Events Preceding the Orders to Show Cause

The applications that gave rise to the OSCs were filed in June and July of 2001, at the height of the California energy crisis. In Application (A.) 01-07-031, PG&E sought Commission approval under Pub. Util. Code § 851 of two easements on PG&E land that were needed in connection with the Delta Energy Center, a new 880 megawatt electric generation plant being built in Pittsburg, California by Delta Energy, LLC (Delta), a joint venture of Calpine Corporation and Bechtel Enterprises, Inc. The requested easements were to be used for an underground-to-overhead electric transition structure, as well as for gas pipelines and valves.¹

¹ D.01-08-069 described the relation of the Delta Energy Center with PG&E's facilities as follows:

“The Delta Plant is an 880 MW combined cycle natural gas fired power plant located on a 20-acre parcel owned by Dow Chemical in Pittsburg, California. In addition to the plant itself, the [California Energy Commission, or CEC's] decision also addressed a new 3.3 mile 230 kV electric transmission line that interconnects the Delta Plant to the transmission grid at PG&E's existing Pittsburg substation, and a new 5.2 mile natural gas fuel supply line that connects the Delta Plant to PG&E's Line 400 in Antioch. Specific portions of these linear facilities are the subject of this proceeding.

“The electric transmission line runs both overhead and underground in its route from the Delta Plant to the Pittsburg substation. In order to connect with PG&E's facilities at the substation, the transmission line makes a transition from underground to overhead, which requires what has been described as a ‘Transition Structure’ to be constructed on PG&E-owned land. The Transition Structure is being constructed by Delta Energy.”
(*Mimeo.* at 2-3.)

The 5.2-mile gas supply line referenced above was described as follows:

“The gas pipeline connects to PG&E's Line 400 in Antioch, on what is referred to as the ‘Wilbur Avenue property.’ The gas pipeline supplies

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In A.01-06-043, PG&E sought approval pursuant to § 851 to enter into leases with CalPeak Power LLC (CalPeak) covering land adjacent to three PG&E substations on which CalPeak proposed to build generation units to help meet electric load.

In both applications, PG&E acknowledged that some work on the sites had already occurred under arrangements PG&E had entered into with CalPeak and Delta pursuant to GO 69-C.² PG&E also sought an alternative ruling in both applications that the proposed transactions were exempt from § 851 review pursuant to Pub. Util. Code § 853(b).

In D.01-08-069, we held that a § 853(b) exemption was not appropriate for the easements related to the Delta Energy Center. However, we also concluded

gas to both the Delta Plant and the already operational 550 MW Los Medanos Energy Center in Pittsburg. The gas pipeline and related gas valves (Gas Facilities) have already been constructed on and/or under PG&E's property by CPN Pipeline Company, a subsidiary of Calpine." (*Id.* at 3-4.)

² GO 69-C provides in pertinent part:

"IT IS HEREBY ORDERED, that all public utilities covered by the provisions of [Pub. Util. Code § 851] . . . are hereby authorized to grant easements, licenses or permits for use or occupancy on, over or under any portion of the operative property of said utilities for rights of way, private roads, agricultural purposes, or other *limited uses* of their several properties without further special authorization by this Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with the operations, practices, and service of such public utilities to and for their several patrons or consumers;

"PROVIDED, HOWEVER, that each such grant . . . shall be made conditional upon the right of the grantor either upon order of this Commission or upon its own motion to commence or resume the use of the property in question whenever, in the interest of its service to its

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that the application should be approved under § 851. (*Mimeo.* at 15-21.) As to CEQA, we concluded as the responsible agency that because the CEC had conducted a full environmental review of the Delta plant, and because the mitigation measures it had imposed were feasible, CEQA guideline 15091(a) applied and we should adopt the same mitigation measures as the CEC. (*Id.* at 24-25.) In D.01-08-070, we granted PG&E's request to exempt the CalPeak leases from § 851 review pursuant to § 853(b). (*Mimeo.* at 5-8.)

In both cases, however, we also concluded that PG&E's actions justified the issuance of an OSC, because the utility's conduct suggested a willful refusal to comply with recent Commission decisions limiting the scope of GO 69-C. For example, we pointed out that just five months earlier, in D.01-03-064, we had admonished PG&E for entering into a license agreement under GO 69-C covering real property, even though the utility clearly intended to sell the property to the licensee. Noting that "any work performed by Buyer . . . was most likely intended to be permanent rather than temporary," we concluded in D.01-03-064 that this arrangement could not reasonably be considered a "limited use" that was consistent with the utility's resuming use of the property, and noted that "we are troubled by the emerging pattern of a utility licensing property under GO 69-C as a precursor to a planned application for sale or lease of the property under Section 851." (D.01-03-064 at 8, 10; *quoted in* D.01-08-069 at 13-14; D.01-08-070 at 15-16.)³ Because the instant situation appeared to present

patrons or consumers, it shall appear necessary or desirable to do so. . ."

(Emphasis added.)

³ We also discussed D.00-12-006, in which we had criticized the use of GO 69-C to evade proper CEQA review of § 851 applications:

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facts similar to those we had criticized in D.01-03-064, and because PG&E had filed the instant applications long after it had become aware of the need for the Delta and CalPeak easements and leases, we concluded that orders to show cause were appropriate:

“[E]nsuring compliance with Section 851 and other laws and regulations is also part of our duty to uphold the public interest. Accordingly, we are issuing an Order to Show Cause to PG&E as to why it should not be found to have violated Section 851 (and related Commission decisions) and to have misused GO 69-C, and why corresponding sanctions should not be imposed. PG&E will provide to [the assigned] ALJ . . . the documents identified in Appendix A within two weeks of the date of this order. A hearing, to be held not less than two weeks from the date of this order, will be scheduled by separate ALJ Ruling. The hearing will be held in conjunction with a similar hearing to be ordered in A.01-06-043. In order to ensure full development of the record, representatives from Delta Energy and CPN Pipeline with knowledge of the transactions shall attend the hearing.” (D.01-08-069, *mimeo.* at 23; footnote omitted.)

“G.O. 69-C cannot reasonably be read to allow utilities [to] bifurcate their transactions so that they would perform construction under an agreement not subject to Commission review by virtue of G.O. 69-C, and then, after the facilities are installed, seek approval of the lease arrangements for those facilities. G.O. 69-C allows utilities to enter agreements without Commission approval only for ‘limited uses.’ We do not believe it is reasonable to consider a license that involves the construction of new facilities for the benefit of the licensee to be a ‘limited use’ where doing so would circumvent environmental review. Such an interpretation would be contrary to the spirit and intent of G.O. 69-C as well as § 851.” (D.00-12-006, *mimeo.* at 5, *discussed in* D.01-08-069 at 11-12, D.01-08-070 at 14-15.)

**Proceedings After Issuance of the Orders
to Show Cause****A. The March 14, 2002 PHC and the
April 17, 2002 Status Reports**

Pursuant to the OSC language quoted above, assigned Administrative Law Judge (ALJ) Peter V. Allen set February 19, 2002 as the date for a hearing on the question of whether sanctions should be imposed on PG&E.⁴ This date was vacated after these cases were reassigned to ALJ A. Kirk McKenzie in December 2001. In January 2002, CSD was designated as the entity to prosecute the OSCs on behalf of the Commission. After giving CSD counsel some time to familiarize himself with the issues, ALJ McKenzie convened a prehearing conference (PHC) on March 14, 2002 to consider scheduling and other issues relating to the OSCs.⁵

At the PHC, most of the discussion was devoted to how the issues raised in the ALJ McKenzie's March 5, 2002 ruling should be resolved. Although CSD and PG&E differed sharply over which of them had the burden of proof, counsel for CSD agreed that a fuller statement of the allegations against PG&E was called for, and he proposed to file a "bill of particulars" for this purpose after conducting approximately 70 to 90 days of discovery. CSD counsel also argued that PG&E should not be permitted to file any motion to dismiss the OSCs until after the bill of particulars had been provided. (PHC Transcript,

⁴ ALJ's Ruling Setting Hearing on Sanctions, issued October 5, 2001.

⁵ Administrative Law Judge's Ruling Concerning Prehearing Conference, issued March 5, 2002.

pp. 6-9; 27-31.)⁶ Counsel for CSD also indicated that although he had only begun to conduct discovery, the privilege log provided by PG&E in connection with its responses to the data requests set forth in D.01-08-069 and D.01-08-070 appeared to be very thorough, that all counsel had shown a willingness to confer, and that therefore it was not yet clear whether any motions to compel further discovery responses would be necessary. (*Id.* at 22-24.)

In view of the uncertainties regarding discovery and how much time would be needed to prepare the bill of particulars, CSD and PG&E both agreed that they were not yet in a position to propose a hearing schedule. The ALJ therefore directed them to file status reports in mid-April, after they had had an opportunity to confer at length about scheduling and other issues. The ALJ also stated that, depending on what the status reports contained, he might schedule an additional PHC. Finally, the parties agreed to furnish authorities in their status reports concerning their differences over the burden of proof, in the event they were unable to resolve these differences after further discussion. (*Id.* at 27-28, 36, 40-42.)⁷

⁶ The ALJ also noted that in D.01-12-022 and D.01-12-023, the Commission had recently denied PG&E's applications for rehearing of D.01-08-069 and D.01-08-070. In view of this, the ALJ stated that motions to dismiss which merely reiterated the arguments made in the applications for rehearing would not be looked upon with favor. (*Id.* at 12-13.)

⁷ Counsel for CSD agreed that there was a particular need to clarify the status of CalPeak, as to which no wrongdoing was asserted in D.01-08-070. CSD also suggested that it might be appropriate to settle the CalPeak matter, while counsel for CalPeak stated that if this was not possible, he intended to file a motion to dismiss, and that a detailed bill of particulars as to CalPeak's conduct would be especially important. (*Id.* at 19-21; 42-44.)

At the PHC, there was also a brief discussion of Petition (P.) 02-02-003, a petition for rulemaking filed by PG&E seeking clarification of the proper scope of GO 69-C, which PG&E asserted had become muddled as a result of D.01-08-069 and D.01-08-070. PG&E suggested that a stay of these proceedings might be appropriate while the petition for rulemaking was being considered, but ALJ McKenzie indicated that no decision could be made on that issue until the ALJ assigned to the rulemaking petition had a full opportunity to consider the matter. (*Id.* at 16-18.)

Pursuant to the ALJ's instructions, both CSD and PG&E filed status reports on April 17, 2002. Both parties summarized the status of their discovery and proposed schedules that contemplated a hearing in mid-September 2002, although CSD's proposal gave PG&E somewhat less time for discovery and the preparation of testimony than PG&E thought was justified. Both parties also stated that they remained at odds over who had the burden of proof, and each side furnished case authority allegedly supporting its position. CSD noted that the parties' differences over who had the burden of going forward appeared to have narrowed in view of CSD's willingness to provide a bill of particulars, while PG&E argued that briefing was necessary on the issue of how full a showing of violations CSD would have to make in this initial filing.

B. The November 20, 2003 PHC

Owing to the press of other Commission business, there was no further activity in these cases after the April 2002 status reports until a ruling convening another PHC was issued on November 5, 2003.

The PHC was held on November 20, 2003. Counsel for PG&E stated that he had proposed to CPSD that the parties meet in early December to determine if a settlement could be reached. If that was not possible, PG&E

proposed coming back for another PHC on December 17, 2003 to set a hearing schedule. Counsel for Delta stated that this plan was acceptable to him, and counsel for CalPeak argued once again that in the absence of any allegations of wrongdoing by his client, CalPeak should be dismissed as a party to the OSCs. The ALJ agreed to PG&E's proposal and set December 17th as the date for the third PHC, in the event one was needed.

The parties' discussions proceeded more slowly than anticipated, and the December 17, 2003 PHC was postponed twice. Finally, on January 23, 2004, counsel for CPSD informed the ALJ that the parties had reached a settlement. On February 13, 2003, PG&E filed the instant Motion to Approve Proposal To Resolve Proceedings.⁸

Discussion

As noted in the introduction, there are two elements to PG&E's proposal for resolving these proceedings: (1) PG&E would pay the Commission \$55,000 within 10 days after the issuance of a decision closing these dockets, and (2) PG&E would not have to make any admissions of wrongdoing in connection with the OSCs. However, PG&E notes that the OSCs have already had a deterrent effect, as shown by the significant changes the utility has made to its internal procedures for ensuring that matters raising § 851 issues are given appropriate scrutiny and review.

As support for its proposal, PG&E relies heavily on D.02-04-018, in which we approved another PG&E proposal for resolving an OSC issued in

⁸ PG&E's February 13 motion was served only on the parties active in the OSC phase of these cases. The ALJ requested that the motion also be served on all other parties to the proceedings, which PG&E did on February 20, 2003. No party has filed any opposition to or comments regarding PG&E's proposal for resolving these proceedings.

Investigation (I.) 01-12-010. That investigation grew out of PG&E's failure to submit a Notice of Intent (NOI) for a 2003 test year General Rate Case (GRC), as required by D.01-10-059. Although D.01-10-059 had required the NOI to be submitted by November 14, 2001, PG&E not only failed to do so, but failed to inform the Commission until after the due date that the utility considered the filing of an NOI on such short notice⁹ to be infeasible.

To resolve I.01-12-010 and the related OSC, PG&E proposed to file an NOI by April 15, 2002, and to pay a fine of \$500 for each day after January 9, 2002 that the NOI remained unfiled. PG&E also acknowledged that it had failed to file the NOI by the November 14 due date, and expressed regret that it had failed to provide the Commission with timely notice that it could not meet this deadline. Commission staff supported PG&E's proposal for resolving I.01-12-010.

In D.02-04-018, we began our discussion by noting that although PG&E's proposal was not offered as a formal settlement, it was appropriate to evaluate it under the rule applicable to settlements, Rule 51.1(e) of our Rules of Practice and Procedure. This rule requires that before a settlement can be approved, the Commission must find that it is reasonable in light of the whole record, consistent with law, and in the public interest. PG&E argues that these are also the appropriate criteria to apply here, and that – as in D.02-04-018 – it is evident that PG&E's proposal satisfies them.

PG&E begins its discussion of the Rule 51.1(e) criteria by arguing that the proposal here is clearly in the public interest. PG&E notes that the OSCs have been pending for over two years, and that a significant number of issues would

⁹ D.01-10-059 was mailed on October 26, 2001, giving PG&E less than three weeks to prepare the NOI.

have to be resolved before there could be hearings. According to PG&E, the unresolved issues include who has the burden of proof, whether PG&E is entitled to conduct discovery regarding similar cases, and whether the proceedings were properly initiated. In addition, if a hearing were to be held and resulted in a decision adverse to PG&E, an application for rehearing and an appeal to the Court of Appeal could be expected. (PG&E Motion, p. 8.) By approving the instant proposal, on the other hand, all of this effort could be avoided. Thus, PG&E concludes, its proposal to resolve these OSC proceedings is in the public interest because “it would conserve the human and financial resources of both PG&E and the Commission by eliminating litigation.” (*Id.*)

PG&E also notes that in prior rulings such as D.98-12-075, the Commission has stated that an important purpose of penalty proceedings is to “deter wrongful conduct and prevent future violations of State law or Commission rules.” (*Id.*) Such a deterrent effect has already been achieved here, PG&E maintains, because of the changes PG&E has made to its internal procedures for considering third party requests to use utility property that implicate § 851 and/or GO 69-C. PG&E describes these changes as follows:

“PG&E established a project review team that is focused exclusively on Section 851 compliance. The project review team is comprised of individuals from various departments impacted by Section 851. The team includes Company representatives from the Land Department, Revenue Requirements Department, and the Law Department. In addition, representatives from other departments, such as those responsible for telecommunications and generation interconnection, participate in the project reviews as and when needed. The section 851 project review team holds meetings every other week to discuss requests from third parties to use or encumber utility property, whether by sale, lease, license, easement, or some other means. Additional

meetings are held on a regular basis to discuss 851 applications for assets targeted to be sold. As a result, PG&E will not grant any request to encumber or sell utility property without the review and analysis of Company representatives, including its attorneys, familiar with the requirements of section 851 and applicable Commission precedent. The establishment of the section 851 project review team has centralized the process to San Francisco where company representatives most knowledgeable about current Commission requirements can review third party requests for use of Company property. This is in contrast to the prior practice where representatives in local offices conducted these reviews. Through these steps, PG&E has significantly enhanced its efforts to ensure compliance with the Commission's 851 requirements." (*Id.* at 9.)

PG&E also notes that as part of its bankruptcy work, it "voluntarily elected to review all past leases and licenses for section 851 compliance and submit all transactions that arguably required approval under section 851 to the Commission," even though some of these arrangements had been in effect for several years. (*Id.* at 10.) The result of this review was A.03-05-012, in which the Commission recently issued D.04-07-021. That decision prospectively approved 255 of the 256 transactions at issue, and found the remaining transaction exempt from § 851 because it was clearly covered by GO 69-C. On the basis of A.03-05-012, PG&E concludes that the OSCs issued in D.01-08-069 and D.01-08-070 have already served their deterrent purpose (and the public interest) by ensuring improved compliance with § 851. (PG&E Motion, pp. 9-10.)¹⁰

¹⁰ PG&E also points out that although requests to encumber the utility's property are now reviewed in San Francisco rather than local offices, "PG&E has still made a concerted effort to ensure that all employees who may receive such requests are familiar with the requirements of section 851 and the Company's compliance practices." (*Id.* at 10.) According to PG&E, these efforts have included special training for Land Rights

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As to the second Rule 51.1(e) criterion -- the reasonableness of its proposal in light of the whole record -- PG&E points out that, just as in D.02-04-018, the record here is minimal, since no testimony has been submitted and no hearing has been held. Indeed, PG&E continues, the record in these cases consists solely of “the OSCs themselves, PG&E’s application for rehearing of D.01-08-070 and D.01-08-069 and resulting Commission rehearing decisions, the transcript of the [PHCs] of March 14, 2002 and November 3, 2003, and PG&E’s motion for approval of its proposal.” (*Id.*) PG&E continues that the \$55,000 it proposes to pay to the Commission is clearly reasonable in light of the internal changes it has made and the facts that (1) the alleged violations did not result in any harm to consumers or property, (2) the CalPeak and Delta projects were designed to help alleviate the energy crisis, (3) the alleged violations did not result in a circumvention of CEQA (since the CalPeak project did not implicate CEQA and the Energy Commission had conducted an “adequate review” of the Delta project’s environmental consequences before construction began), (4) the construction that did occur was very limited, and (5) PG&E has cooperated fully with the Commission at all times. (*Id.* at 11.)

PG&E also argues that it satisfies the third criterion of Rule 51.1(e) -- consistency with law -- because the \$55,000 it is proposing to pay is commensurate with the amount the Commission accepted in D.02-04-018. (*Id.* at 12.)

We agree with PG&E that its proposal meets the requirements of Rule 51.1(e). Although the \$55,000 PG&E proposes to pay is similar to the

Agents, as well as personnel involved in generation interconnection and telecommunications agreements.

amount we accepted in D.02-04-018,¹¹ the most significant factor favoring PG&E's proposal is the series of changes the utility has made to its internal procedures for considering third party requests to use utility property. As noted above, these changes include centralizing the review of all such requests in PG&E's San Francisco headquarters, as well as enhanced training for Land Rights Agents and other personnel in local offices who might have occasion to deal with such third party requests.

Another factor favoring approval of PG&E's proposal is the extent of its cooperation since the OSCs were issued. As noted above, PG&E filed timely responses to the data requests set forth in the appendices to D.01-08-069 and D.01-08-070, and in those instances in which it declined to produce requested documents on privilege grounds, it submitted a thorough privilege log. Counsel for CSD noted PG&E's cooperation on discovery at the first PHC, and -- as noted above -- CPSD supports PG&E's proposal for resolving these proceedings.

Finally, we note that since the issuance of D.01-08-069 and D.01-08-070, there has been no recurrence of the conduct that caused us to issue the OSCs. Although we denied PG&E's rulemaking petition regarding GO 69-C in D.02-10-057, PG&E was an active participant in the workshop held pursuant to that decision, and the changes the utility has made to its internal procedures appear to have reduced significantly its disputes with our staff over which transactions require § 851 review.

¹¹ Although PG&E does not make this argument in its motion, we note that in prior decisions such as *In re Southern California Gas Co.*, D.00-09-034, the Commission has held that no particular nexus is required between a settlement payment and the alleged wrongdoing. (*Mimeo.* at 28.)

As PG&E has pointed out in its motion, the changes it has instituted make a recurrence of the conduct that led to the issuance of the OSCs unlikely, and acceptance of its proposal will save both the Commission and the utility substantial resources that would otherwise have to be devoted to litigation. Under these circumstances, and in view of all the other factors set forth above, we agree PG&E's proposal meets the requirements of Rule 51.1(e), and we will therefore approve it.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7. No comments were received.

Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner, and A. Kirk McKenzie is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Under PG&E's proposal to resolve these proceedings, it would pay the Commission \$55,000 within 10 days after issuance of a decision closing these dockets, and would not make any admissions of wrongdoing in connection with the OSCs issued in D.01-08-069 and D.01-08-070.

2. In D.02-04-018, the Commission agreed to close I.01-12-010 and a related OSC, and to accept a payment from PG&E of \$500 per day for every day from January 9, 2002 to April 15, 2002 that the NOI required by D.01-10-059 remained unfiled. Pursuant to this arrangement, PG&E apologized for its tardiness in filing the NOI, paid the Commission a total of \$48,000, and filed the required NOI on April 15, 2002.

3. PG&E was an active participant in the GO 69-C workshop held pursuant to D.02-10-057.

4. Since the issuance of D.01-08-069 and D.01-08-070, PG&E has instituted significant changes to the way in which it reviews third-party requests for permission to use or encumber the utility's property, including (a) the establishment in PG&E's San Francisco headquarters of a §851 compliance project review team comprised of representatives from the various departments impacted by §851, (b) the assignment of all third-party requests to use or encumber PG&E property to the §851 compliance project review team, (c) the holding of bi-weekly meetings by the §851 compliance project review team, and (d) training for personnel in PG&E regional offices (such as Land Rights Agents) who must occasionally deal with third-party requests to use or encumber PG&E property.

5. Since 2002, there has been no recurrence by PG&E of the kind of conduct that caused the Commission to issue the OSCs herein.

6. Since the issuance of the OSCs herein, no testimony has been submitted and no hearings have been held in these proceedings. However, PG&E has responded to data requests from CPSD and two PHCs have been held.

7. PG&E has cooperated with the Commission in these proceedings since the issuance of D.01-08-069 and D.01-08-070.

Conclusions of Law

1. PG&E's proposal for resolving these proceedings should be evaluated under the criteria for evaluating settlements set forth in Rule 51.1(e).

2. PG&E's proposal for resolving these proceedings is in the public interest, because it would conserve Commission resources that would otherwise have to be devoted to litigation.

3. As evidenced by the internal changes made by PG&E and summarized in Finding of Fact 4, the OSCs issued herein have served to deter non-compliance with GO 69-C and Pub. Util. Code §851, and have thus served the public interest.

4. In view of the minimal nature of the record adduced in these proceedings since the issuance of D.01-08-069 and D.01-08-070, PG&E's proposal for resolving these proceedings is reasonable.

5. PG&E's proposal for resolving these proceedings is reasonable in light of the record and similar in monetary amount to the resolution in D.02-04-018.

6. PG&E's proposal for resolving these proceedings is consistent with law, reasonable in light of the whole record, and in the public interest, and should therefore be approved.

7. These proceedings should be closed.

8. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Within 10 days after the mailing date of this decision, Pacific Gas and Electric Company (PG&E) shall pay the sum of \$55,000.00 to the California Public Utilities Commission for deposit into the General Fund. Payment shall be made by remitting such amount to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco CA 94102. PG&E shall include the number of this decision on the face of the check by which the payment is made.

2. These proceedings are closed.

This order is effective today.

Dated _____, at San Francisco, California.